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S E C R E T SECTION 01 OF 03 MADRID 001214

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SUBJECT: CALLS FOR REFORM OF SPAIN'S COUNTER-TERRORISM LAWS

REF: A. MADRID 73

[I](#)B. 2007 MADRID 1914

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Classified By: DCM Arnold A. Chacon for reasons 1.4 (b), (c) and (d)

[I](#)1. (C) SUMMARY: Spain's counter-terrorism (CT) laws were designed with the domestic terrorist group ETA - Basque Fatherland and Liberty - in mind, but a number of recent rulings and actions by the Spanish judiciary and law enforcement forces in recent weeks have brought into focus Spain's need to update its judicial framework to better confront the threat posed by radical Islamic terrorism. These events provide an interesting case study on the Spanish judicial system's approach to this issue. While Spanish security forces have ample discretion to detain terrorist suspects, the bar for their conviction in court remains fairly high and convictions are frequently overturned by the Supreme Court upon appeal. A renowned Spanish CT expert and the daily newspaper of record, among others, are calling for reforms. Embassy Madrid notes that several CT arrests in October are just the latest in a string of detentions in the Catalonia region, the site of more than a dozen high-profile raids on suspected radical Islamists since 9/11, and underscore the need for the increased USG presence in Barcelona in the form of the multi-agency, jointly-coordinated counterterrorism, anti-crime, and intelligence center currently being established at the Consulate General. END SUMMARY.

[I](#)2. (SBU) The Spanish Supreme Court on October 7 acquitted on appeal 14 of the 20 people sentenced in February 2008 for membership in an Islamic terrorist group. The cell, dismantled in late 2004 as part of Operation Nova, planned to truckbomb the National Court, a symbolic target whose judges have been instrumental in the detention of radical Islamists in Spain following 9/11. Ensuing press coverage noted that the final tally for Operation Nova meant that of the 45 people arrested, 30 were charged, which led to 20 convictions, six of which were upheld following the Supreme Court's appellate ruling, although the sentences of four were reduced, leaving the convictions of only two individuals untouched. Spanish media coverage also recalled that the Supreme Court in July 2008 had overturned four of the 21 convictions in the Madrid train bombers' case.

[I](#)3. (SBU) The Supreme Court released a report on November 7 which justified its October 7 decision, in part, because

being sympathetic to radical jihadist views is not a crime; actions are criminal, not beliefs. Press reports cited Justice Jose Antonio Martin Pallin as the author of the majority opinion, which reads in part, "The law of the land never punishes someone for ill will alone," emphasizing that actions are punishable while thoughts are not. Nevertheless, the Supreme Court ruling praised the Spanish security services for acting when they did, to prevent the plot from reaching fruition and thereby saving lives.

¶4. (C) POLOFF met on October 29 with Professor Fernando Reinares, Director of the Program on Global Terrorism at the Real Instituto Elcano, a former CT adviser to the Minister of Interior, and one of Spain's most recognized CT experts, about the significance of the Supreme Court's October 7 ruling. He judged that the Supreme Court is undertaking "a very dangerous, risky" strategy by overturning lower-court rulings and releasing convicted radical Islamists. He described a GOS security forces strategy that effectively seeks to disrupt any known terrorist cells to eliminate any present risks, accepting that at a later point Spain may face attacks by those same jihadists if they are later freed or exonerated by the judicial process (such as what almost happened in Operation Nova, whose cell leader had previously served time in a Spanish jail). Reinares also noted that the Supreme Court's acquittal for those involved in Operation Nova will become a legal precedent for future cases, including the case that investigating judge Ismael Moreno of the National Court is preparing against the cell disrupted in Barcelona on January 19, 2008 (see REFTEL A) as part of Operation Cantata. That case, which involved a plot to attack the Barcelona metro system, could go to trial in February 2009.

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¶5. (S) A week after the Supreme Court overturned the Operation Nova convictions, the Spanish National Police (SNP) on October 16 conducted a nationwide raid -- codenamed Operation Amat -- that detained radical Islamists who allegedly were involved in terrorist financing, terrorist recruiting activities and facilitating the escape of five people involved in the 2004 Madrid train bombings. The SNP had been following these suspects for years (Operation Amat was a follow-on to Operation Tigris that detained suspects in 2005 for recruiting radical Islamists to go fight in Iraq). Embassy Madrid learned from GOS sources that one of the suspects in Operation Amat was preparing to travel to Morocco, so the SNP decided it would be better to apprehend him before he left the country, and then, if they were going to do that, they might as well arrest all of the suspects at the same time. However, on October 20 judge Baltasar Garzon, Moreno's colleague on the National Court, released the 10 suspects who appeared before his court, a move that Reinares interpreted as a reaction against the Supreme Court's recent decision on the Operation Nova verdicts. Reinares assessed that Garzon -- arguably the most high-profile and media-savvy judge in the Spain judiciary who is also its most experienced on the CT issue -- was effectively sending a message to the Supreme Court that he was not going to dedicate his time and energy to prepare a case that will later be overturned.

¶6. (C) Reinares argued that the judicial framework for combating radical Islamic terrorism needs to be changed. He identified three problems with the current Spanish legal framework related to prosecuting radical Islamic CT cases:

I) The current Spanish CT legislation was formulated with ETA in mind. Under the current system, an act of terrorism is something very concrete and involves very specific details about planned attacks, with dates, times, and locations provided. Furthermore, the current law envisions a very well organized, hierarchical group that is undertaking the terrorist act. This understanding does not take into account generic preparations before a cell becomes operational.

II) The majority opinion among the judges in the Supreme Court's Criminal Chamber is that conspiracy and collaboration by radical Islamists to prepare an attack do not constitute a crime under their interpretation of the existing laws.

Reinares notes that there were no legislative changes in Spain after the 3/11 attacks and argues that -- because the current scenario does not match the ETA template -- those judges do not understand that suspects in small cells, such as the one disrupted in Operation Cantata, are part of a larger, formal organization.

III) Reinares says that in Spain there is a culture of "garantismo juridico" -- guaranteed jurdiical rights -- that emphasizes the protection of civil rights and frequently makes police work and prosecutions difficult.

17. (SBU) Several press reports have also called for reforms of the penal code regarding Islamic terrorism. For example, a November 9 editorial in *El Pais*, the left-of-center newspaper of record in Spain, echoed Reinares' concerns about the need for reforming Spain's judicial framework to address the differences that Spanish security forces are encountering in radical Islamic terrorism vice Basque terrorism. The editorial said the Supreme Court ruling in the *Nova* case highlights a difference in the criteria used by the National Court and the Supreme Court over at what point one commits a crime for belonging to an armed group devoted to jihadist terrorism and the evaluation of the relative proof of that crime. The editorial observed that the former court tends to attribute membership in a terrorist cell not only to the leadership and the most active members, but also to those in concentric circles to that core group while the latter court tends to disavow direct membership for those whose role does not extend beyond sharing radical ideological views.

18. (C) COMMENT: The Spanish, having experienced the tragedy of the Madrid train bombings, are understandably reluctant to let suspects cross the line between holding extreme Islamic views and going operational to conduct attacks in support of those beliefs. Consequently, Spanish security forces have considerable latitude to keep terrorists off the streets and,

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according to Embassy Madrid's Legal Attache, Spanish judges are similarly forward-leaning in authorizing wire-taps on terrorist suspects. The LEGAT assesses that the current Spanish CT approach is very effective in disrupting cells, although admittedly not in securing long sentences for those arrested. As a comparison, the LEGAT also notes that it would be very difficult in the United States to hold terrorist suspects in jail without a trial for as long as they are held in Spain. Vicente Gonzalez Mota, the prosecutor on the National Court who will be trying the Operation Cantata case, pointed out to POLOFF on November 10 that Spain has arrested more radical Islamic terrorist suspects than the United States since 9/11 and has more convicted radical Islamist terrorists in jail than the United States does. However, Garzon's decision to release the Operation Amat suspects appears to set the stage either for a power play within the Spanish judiciary on how to interpret the existing law on when a crime has been committed or for reform of the Penal Code as it relates to radical Islamic terrorism.

19. (C) COMMENT (CONTINUED): Embassy Madrid notes that the arrests in Operation Amat -- more than a dozen of which occurred within the province of Barcelona -- are just the latest in a string of detentions in the Catalonia region, the site of more than a dozen high-profile raids on suspected radical Islamists since 9/11. This track record and the recent arrests of more suspects underscores the need for the increased USG presence in Barcelona in the form of the multi-agency, jointly-coordinated counterterrorism, anti-crime, and intelligence center currently being established at the Consulate General, which Embassy Madrid originally proposed in REFTEL B. Inter-agency commitments to

support the Hub have taken shape throughout 2008. The first of the new personnel have arrived and are up and running. More are expected soon. END COMMENT.

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